

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2018

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to asylum and immigration data in Northern Ireland. The Home Office confirmed it held relevant information but refused to provide it citing section 12(1) (cost of compliance) of the FOIA.
2. The Commissioner's decision is that the Home Office has provided a reasonable estimate of the costs associated with complying with the request and has therefore correctly applied section 12 of the FOIA to the request. However, the Commissioner finds that the Home Office breached section 16(1) of the FOIA in that it did not provide reasonable advice and assistance to the complainant as to how her request could have been refined to bring it within the cost limit.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
 - to take reasonable steps to advise and assist the complainant with a view to refining the request to bring it within the cost limit.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 October 2017, the complainant wrote to the Home Office and requested information in the following terms:

"... I wish to request the following data on asylum applications in Northern Ireland between 2008 and 2017 or over the longest time period possible to comply with cost and time exemptions:

- A breakdown of the number of applications for asylum in Northern Ireland, by year and by nationality,*
- A breakdown of the number of people granted asylum on first instance in Northern Ireland, by year and by nationality,*
- A breakdown of the number of people granted asylum on final decision in Northern Ireland, by year and by nationality,*
- A breakdown of the number of people refused asylum on first instance in Northern Ireland, by year and by nationality,*
- A breakdown of the number of people refused asylum on final decision in Northern Ireland, by year and by nationality,*
- A breakdown of the number of asylum seekers transferred from Northern Ireland under the Dublin regulation, by year, by nationality, and by country of destination.*

I also wish to request the following data on immigration in Northern Ireland between 2008 and 2017 or over the longest time period possible to comply with cost and time exemptions:

- A breakdown of the number and nationality of people refused entry (refused leave to land) to Northern Ireland for each year under the following headings: by location of refusal – refused at land, sea, or air border; and by reason for refusal – invalid travel papers, invalid permit, false travel papers, false permit, stay not justified, insufficient means, public threat, alert.*
- A breakdown of the number of people found to be illegally present in Northern Ireland and detained by immigration services, by year and by nationality.*
- A breakdown of the number of people detained by immigration services in Northern Ireland and subsequently released into the community, by year and by nationality.*
- A breakdown of the number of people detained at Larne House and Drumkeen House, the length of detention, and outcomes of each detention, by year and by nationality.*

- *A breakdown of the number of at-risk detainees in detention facilities in Northern Ireland, by year, by nationality and by identified risk.*
 - *A breakdown of the number of people ordered to leave Northern Ireland, either voluntarily or by deportation, by year and by nationality.*
 - *A breakdown of the number of people with refugee status in the Republic of Ireland who were detained by immigration services in Northern Ireland for failing to have a visa or valid travel documents”.*
6. The Home Office responded on 22 November 2017. It confirmed it held the requested information but refused to provide it, citing section 12 of the FOIA (cost of compliance).
 7. The complainant requested an internal review on 24 November 2017.
 8. The Home Office acknowledged receipt of the request for internal review and told the complainant it would aim to send a full response by 27 December 2017.
 9. On 15 February 2018 the Home Office apologised for the delay in responding. However, the outcome of the internal review remained outstanding.

Scope of the case

10. The complainant contacted the Commissioner on 20 March 2018 to complain about the way her request for information had been handled.
11. Describing the Home Office’s decision to refuse the request as ‘vague’, she told the Commissioner:

“The Home Office has used Section 12 (cost limits) to refuse this request without providing any breakdown on the search and retrieval costs associated with the information being sought. The Home Office has also failed to provide any specific advice or guidance on how this request could be revised in order to remain within the scope of the Act”.
12. She also noted that the internal review, requested on 24 November 2017, remained outstanding.
13. In the circumstances, the Commissioner used her discretion to accept the case without the internal review having been completed.

14. During the course of the Commissioner's investigation, the Home Office confirmed its application of section 12 in this case.
15. The analysis below considers the Home Office's application of section 12(1) of the FOIA to the requested information. The Commissioner has also considered whether the Home Office provided reasonable advice and assistance to the complainant at the time the request was made.

Reasons for decision

Section 12 cost of compliance

16. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

17. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.

Would complying with the request exceed the appropriate limit?

18. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
20. In correspondence with the complainant, the Home Office confirmed it held relevant information, but that it was unable to provide it to her. By way of explanation it said:

"We hold the information which you have requested but we have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data

Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. We would need to examine the records of asylum seekers and those encountered illegally in Northern Ireland and examine their records in detail to obtain the information you have requested”.

21. In its submission to the Commissioner, the Home Office said:

“The request asks for a very large and detailed amount of data, although we appreciate that that in itself does not mean that it would necessarily exceed the cost limit. ...”.

22. In support of its application of the section 12 exemption, the Home Office explained the difficulty it had in distinguishing Northern Ireland cases. It told the Commissioner:

“There are many possible indicators, but there is no single flag that would identify a case as being a Northern Ireland one. As only latest address is currently available to us for reporting purposes, we cannot be certain how many people applied for asylum or had a decision in Northern Ireland during any historic period without manually checking all asylum records”.

23. It advised that while there were ways in which it could interrogate the information it held, they would exceed the costs limit.

24. The Commissioner notes that the complainant wrote to the Home Office saying:

“The routine publication of Home Office and Eurostat data would suggest that data from Northern Ireland must be routinely submitted to the Home Office to feed into the UK datasets.

This would also rule out the need to examine records of asylum seekers etc as indicated in the Home Office’s response.

Can the Home Office clarify this matter further?”

25. However, it was not until the Commissioner’s investigation that the Home Office addressed the arguments put forward by the complainant and provided information on the number of cases which would need to be searched to answer specific parts of the multi-part request, together with an indication of how long answering some parts of the request would take and why.

26. For example, with respect to the first part of the request, (a breakdown of the number of applications for asylum in Northern Ireland, by year and by nationality), the Home Office told the Commissioner:

"Published Migration Statistics provide that there were 248,490 asylum applications during the period which would require a manual CID check of the address history to identify if it was made in Northern Ireland. Even if we assume a manual check could be carried out in an average two minutes (possible in some cases, not in others), this would take us way over the cost limit".

27. With respect to another aspect of the multi-part request, the part relating to the number of people granted asylum on final decision in Northern Ireland, by year and by nationality, the Home Office's observation was that it was:

"Not a published figure and not straightforward to answer".

28. In relation to the complainant's argument that relevant information is routinely published, the Home Office told the Commissioner:

"The requester may be under the misapprehension that data is collected in Northern Ireland and then submitted to be included in the published data. Perhaps it would be helpful to explain that UK Visas and Immigration and Immigration Enforcement staff in Northern Ireland complete the Case Information Database (CID) in the same way as caseworkers across the UK: there is not a separate system".

29. It concluded its argument in support of its application of section 12 in this case:

"The immigration enforcement parts of the request would thus require approximately 28 hours' work, where we could provide the information".

The Commissioner's view

30. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
31. Section 12(1) requires a public authority to estimate the cost of a request; it is not required to calculate the exact cost of the request. The question for the Commissioner here is whether the estimate made by the Home Office of the cost of this request was *reasonable*. If the Commissioner concludes that it was reasonable for the Home Office to estimate that the cost of this request would exceed the limit of £600,

section 12(1) will apply and the Home Office was not obliged to comply with the complainant's information request.

32. In her guidance on section 12¹, the Commissioner, following the lead of the then Information Tribunal, considers that a reasonable estimate is one that is:

"...sensible, realistic and supported by cogent evidence".

33. While acknowledging that it is not a statutory requirement to explain how the estimate has been calculated, the Commissioner considers it is beneficial to a public authority to do so:

"... to enable the requestor to assess the reasonableness of the estimate".

34. In this case, although it explained to the complainant in general terms why it considered that complying with the request would exceed the cost limit, the Home Office failed to quantify the scale of the searches or explain the number of records that would need to be reviewed.
35. However, having considered the submission provided by the Home Office during the course of her investigation, the Commissioner is satisfied that the Home Office has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
36. Section 12(1) does therefore apply and the Home Office is not required to comply with the request.

Section 16 advice and assistance

37. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request *"so far as it would be reasonable to expect the authority to do so"*.
38. In her guidance referred to above, the Commissioner considers the provision of advice and assistance. She states:

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or

- provide an indication of what information could be provided within the appropriate limit; and

- provide advice and assistance to enable the requestor to make a refined request".

39. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

40. In that respect, the Commissioner accepts that the Home Office told the complainant:

"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. It may be possible to answer your request if you separate the asylum and the illegal entrant elements of your request, but please note that if you do break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600".

41. The Commissioner is mindful that the complainant told the Home Office:

"... I would consider refining my request by reducing the volume of data sought but the Home Office has not provided a detailed costing for this request making that more difficult to do so".

42. In the circumstances of this case, the Commissioner concludes that the Home Office failed to provide the complainant with reasonable advice and assistance. As a result she finds that the Home Office breached section 16(1) of the FOIA and at paragraph 3 above it is now required to take remedial action.

Other matters

Internal review

43. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has

issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.

44. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Right of appeal

45. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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